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15 THE THOMAS KINKADE COMPANY

16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION – E-FILING

19 DAVID KAYNE, an individual citizen) Case No. C 07-4721 SI
20 of Georgia,) Related Case: C 04-00186 SI
21)
22) STIPULATION AND [PROPOSED]
Plaintiff,) ORDER RE WITHDRAWAL OF
vs.) PLAINTIFF'S MOTION FOR TRO AS
23 THE THOMAS KINKADE COMPANY,) MOOT
24 formerly known as MEDIA ARTS)
GROUP, INC., a Delaware Corporation,) Hearing Date: November 1, 2007
25) Hearing Time: 9:00 a.m.
Defendant.) Courtroom: 10, 19th Floor

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1 WHEREAS, on October 2, 2007, when this matter was before Judge Fogel,
2 Plaintiff David Kayne ("Plaintiff" or "Mr. Kayne") filed a motion seeking a
3 temporary restraining order and preliminary injunction to enjoin defendant The
4 Thomas Kinkade Company ("TKC") from proceeding further with an arbitration
5 scheduled to occur on October 16, 2007; and

6 WHEREAS, on October 3, 2007, TKC filed an opposition to Mr. Kayne's
7 motion seeking to enjoin TKC's participation in the October 16 arbitration
8 proceedings; and

9 WHEREAS, on October 4-5, 2007, Mr. Kayne filed a reply in support of his
10 motion seeking to enjoin TKC's participation in the October 16 arbitration
11 proceedings; and

12 WHEREAS, Mr. Kayne's motion to enjoin TKC's participation in the October
13 16 arbitration proceedings was taken under submission by Judge Fogel but not
14 ruled upon; and

15 WHEREAS, in the absence of any order from this Court, TKC did participate
16 in the October 16 arbitration proceedings; and

17 WHEREAS, the parties are in agreement that Mr. Kayne's motion seeking to
18 enjoin TKC from participating in the October 16 arbitration proceedings is now
19 MOOT;

20 NOW, THEREFORE, it is hereby stipulated as follows by and between Mr.
21 Kayne and TKC through their respective undersigned counsel:

22 1. The motion of Mr. Kayne seeking a temporary restraining order and/or
23 preliminary injunction to prevent TKC from participating in the October 16, 2007
24 arbitration proceedings is now MOOT; and

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1 2. In the circumstances, the motion by Mr. Kayne may be WITHDRAWN;
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3 3. The November 1, 2007 hearing date for Mr. Kayne's motion should be
4 VACATED.

5 Dated: October 26, 2007

Respectfully submitted,

7 | HOLLAND & KNIGHT LLP

McDERMOTT WILL & EMERY LLP



Chad Weis

By: Charles L. Coleman, III

By: Charles E. Weir

Attorneys for Plaintiff
DAVID KAYNE

Attorneys for Defendant
THE THOMAS KINKADE COMPANY

Based on the foregoing stipulation of the parties, and good cause appearing, the November 1, 2007, hearing date on Mr. Kayne's motion for a temporary restraining order and/or preliminary injunction is hereby VACATED and his motion shall be deemed MOOT.

IT IS SO ORDERED.

Dated: October ___, 2007

**SUSAN ILLSTON
UNITED STATES DISTRICT JUDGE**